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# United States Senate

COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEBSITE: <http://commerce.senate.gov>

JOHN KEAST, STAFF DIRECTOR  
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June 2, 2020

The Honorable Ajit V. Pai  
Chairman  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

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Dear Chairman Pai,

Access to high-speed broadband is critical for Americans in this digital age. Increasingly work, school, health care, and connecting with loved ones take place online in a digital format. This trend has only accelerated during the COVID-19 pandemic. However, far too many Americans remain unconnected. The Federal Communications Commission's (FCC or Commission) 2020 Broadband Deployment Report estimates that 18.3 million Americans still lack access to a fixed broadband connection.<sup>1</sup>

I welcome the FCC's ongoing efforts to close the digital divide. For example, the Rural Digital Opportunity Fund (RDOF) will provide \$20.4 billion in support to broadband providers over 10 years to help accelerate the availability of fixed internet services in unserved areas. Likewise, the FCC's upcoming \$9 billion 5G Fund is an important program designed to help millions of rural and underserved Americans gain access to reliable mobile broadband services.

However, given the current increased need for reliable internet during the pandemic, broadband funding, particularly through the RDOF program, may not come soon enough. I have heard from a number of Mississippi broadband providers that are ready to begin deploying in unserved areas, but cannot act until they receive this critical support. This situation is not unique to Mississippi.

Congress is now considering a proposal that would accelerate the distribution of the RDOF resources to eligible providers.<sup>2</sup> Under this proposal, the FCC would be required to allocate the RDOF monies to broadband providers that are expected to be the sole bidder to deliver gigabit-speed service in a census block or census block groups before the reverse auction scheduled for October 22, 2020. Winning bidders would have to commit to beginning construction within six months of funding authorization and make service available to consumers within one year of authorization.

Expediting the distribution of the RDOF support may help speed up our efforts to close the digital divide. At the same time, I recognize the Commission's legal and procedural constraints to modify

<sup>1</sup> *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, 2020 Broadband Deployment Report, GN Docket No. 19-285 at Fig. 1 (rel. Apr. 24, 2020), <https://docs.fcc.gov/public/attachments/FCC-20-50A1.pdf>.

<sup>2</sup> The Rural Broadband Acceleration Act, H.R. 7022 (2020), <https://www.congress.gov/bills/116/congress/house-bill/7022>.

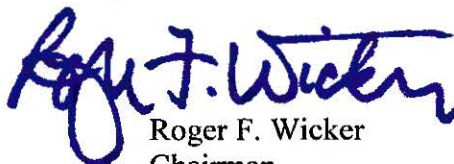
approved rules, maximize taxpayer dollars, and act in the public interest. I also recognize the need for adequate time to review and process applications and conduct a fair, competitive, and efficient auction. As Congress considers this legislative proposal to accelerate the RDOF, I ask that you respond to the following questions, which will help inform our work:

1. Under current rules, the FCC is expected to review and process long-form applications at the conclusion of the RDOF Phase I reverse auction. Please explain the Commission's rationale for processing long-form applications after the auction has been completed.
2. One proposal considers requiring the FCC to review and process long-form applications 30 days after the Commission begins accepting short-form applications or by July 31, 2020. How would such a requirement impact the auction's expected start date? What additional personnel or resources would the FCC need to meet such a deadline?
3. If long-form applications submitted to the FCC before the start of the auction indicate that there would be only one qualified applicant willing to provide symmetrical gigabit-speed service to a census block or census block groups, how would an award to such an applicant before the auction at 100 percent of the reserve price impact the auction's composition? In your response, please address the impact on the auction's overall budget, the number of bidders that could participate in the auction, and the total number of census blocks or census block groups that could be served, as well as any other relevant benchmark.
4. Please outline the process the FCC would have to follow under the Administrative Procedure Act to modify the framework of the auction to meet accelerated deadlines for processing long-form applications and making awards before the commencement of the auction.
5. Has the FCC updated or modified the Preliminary List of Eligible Areas released on March 17? When will an updated list be made available to the public?

I would ask that you provide responses in writing as soon as possible, but by no later than June 12, 2020.

Thank you for your attention to this matter. I look forward to continuing to work with you to close the digital divide so that every American can access the benefits of broadband.

Sincerely,

A handwritten signature in blue ink that reads "Roger F. Wicker". The signature is stylized with a large, looped "R" and a cursive "Wicker".

Roger F. Wicker  
Chairman  
Senate Committee on Commerce  
Science, and Transportation





FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

June 12, 2020

The Honorable Roger Wicker  
Chairman  
Committee on Commerce, Science, and Transportation  
United States Senate  
512 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Wicker:

Thank you for your letter regarding the Commission's efforts to encourage deployment of high-speed, reliable, and affordable broadband in unserved rural communities through the proposed Rural Digital Opportunity Fund. Closing the digital divide and bringing digital opportunity to all Americans, no matter where they live, is my top priority. I have seen for myself what broadband can do for a community—for its families, its schools, its hospitals, its farms, its businesses—as well as the impact of its absence. And as you note, the COVID-19 pandemic highlights the urgency of closing the digital divide. That's one reason why we're moving full speed ahead with the Rural Digital Opportunity Fund.

It is imperative that the Universal Service Fund support sustainable, future-proofed networks that will deliver tomorrow's broadband applications, as well as today's. That's why the Commission adopted rules for the \$20.4 billion Rural Digital Opportunity Fund last January. It allocated up to \$16 billion for the Phase I auction, which will target support to areas that current data show are wholly unserved. Concurrently, the Commission will work to develop new, more granular broadband availability for Phase II in its Digital Opportunity Data Collection proceeding, an approach Congress recently endorsed in the Broadband DATA Act. The Commission is more than doubling the minimum speeds from the Connect America Fund Phase II auction to 25/3 Mbps and awarding support to the bidder in each area with the best combination of speed and latency once the total price of all bids in the auction falls below the auction's budget. The Commission also took steps to incentivize winning bidders to deploy broadband as quickly as possible, such as allowing providers to reduce the size of the necessary letter of credit if they deploy broadband networks more quickly than the required milestones.

In your letter, you ask several questions about a bill currently before Congress, H.R. 7022, which purports to accelerate the Rural Digital Opportunity Fund Phase I auction for one small group of providers—namely, those deploying symmetrical gigabit fiber networks—by

requiring the Commission to allocate a piece of the budget to these providers through a filing window outside the auction process. H.R. 7022 could negatively impact those Americans on the wrong side of the digital divide and significantly delay the Phase I auction.

Let me start with a simple point: Competitive bidding is a powerful tool to ensure that we use finite universal service resources efficiently and get the most bang for taxpayers' buck. In a reverse auction, companies must compete with each other for funding to provide a certain level of service, driving down prices taxpayers ultimately must pay. Funding a select group of applicants outside of an auction risks giving one set of providers more (potentially, far more) than they would be willing to accept if they had to compete in an auction. And such funding would come at the expense of other areas that would have received funding had the reverse auction (along with its more fiscally responsible results) gone forward as planned.

This is not mere speculation. The results of the Connect America Fund Phase II auction are instructive here. There, the clearing price was 78.35% of the auction's reserve price. That's because a variety of companies competed with each other for funding, rather than the Commission cutting full-price checks to a fortunate few. But had H.R. 7022's approach applied back then, the Commission would have had to pay symmetrical gigabit bidders the full price (100% of the reserve price, or 27.6% more) for the same networks. What is more, H.R. 7022 would require the Commission to award support even in areas that are *already* being built out with gigabit fiber under other state or federal support programs—requiring us to spend taxpayer funds to overbuild a different network, itself built with other taxpayer funds. In short, H.R. 7022 would result in fewer dollars available to bring coverage to unserved areas through the more-efficient auction process.

H.R. 7022 would also delay the Rural Digital Opportunity Fund's Phase I auction. Our current timeline for the Phase I auction anticipates authorizing support for winning bidders beginning in March 2021. But due to the significant changes we would have to make to our Phase I auction at this late stage and the need to divert staff resources to implement the legislation, Commission staff expect that, under the bill, the start of the Phase I auction would be delayed from October 2020 to at least mid-April 2021. And we would not expect to authorize support for winning bidders until at least August 2021. By contrast, assuming that the bill were adopted today, we estimate that the earliest we would be able to start authorizing support for symmetrical gigabit applicants under H.R. 7022 would be February 2021—just one month earlier than the current timeframe.

In short, H.R. 7022 could force us to take more time to spend more money to connect fewer Americans to digital opportunity.

Let me unpack our staff analysis on the timeline a little. A broadband support auction of this scale is a carefully timed and planned out sequence of steps, each one integral to the next, that will culminate in bidding beginning this coming October. You may recall that this process started back in August 2019 with a Notice of Proposed Rulemaking. And the Commission has already completed several necessary steps to proceed toward an auction (Report and Order in January 2020, Proposed Procedures Public Notice in February, Final Procedures Public Notice in June). Additionally, Commission staff have been quite busy creating the short-form and long-



form information systems, refining the eligible areas map, designing the auction, and securing regulatory approvals such as those mandated by the Paperwork Reduction Act in order to finalize the eligible areas map this month, start accepting short-form applications in July, and commence bidding in October.

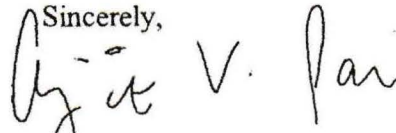
H.R. 7022 upends this carefully planned process. Because it goes beyond the procedures of an auction to create a separate filing window with separate qualifications and obligations (such as the new “symmetrical gigabit” applicant class with its own set of deployment obligations), the Commission would need initiate a new notice-and-comment rulemaking to implement the legislation. And it would have to complete that rulemaking process—including drafting a new Notice of Proposed Rulemaking, full Commission review, Federal Register publication, public comment, public replies, drafting a new Report and Order, another full Commission review, and Federal Register publication—in under 90 days to just to hit February 2021 target highlighted above. At the same time, the Commission would need to complete a new rulemaking process for procedures—including drafting a new Proposed Procedures Public Notice, full Commission review, Federal Register publication, public comment, public replies, drafting a new Final Procedures Public Notice, another full Commission review, and Federal Register publication—in the same timeline. Adding in revisions to the short-form and long-form information systems, as well as a new Paperwork Reduction Act approval process (itself on an expedited basis), the opening of the short-form window for symmetrical gigabit applicants would be delayed until November 2020 with the long-form window opening in December. Assuming the Commission had the significant staff resources required to review these long-form applications starting in mid-December, letter of credit commitment letters would be due in January, and we would expect the first authorizations to take place in February. This is the (unlikely) best-case scenario.

For bidders in the Phase I auction—that is, those not among the chosen few who get fast-tracked funding—the schedule would be confusing, to say the least. That’s because the Commission traditionally puts out the map of areas eligible for bidding before opening the short-form window. But here, we could not do that for auction participants until March 2021—after Commission staff have reviewed and processed the symmetrical gigabit applications and determined what areas eligible for that process would remain in the auction (we obviously would not want to overbuild these fiber deployments). In other words, bidders would be required to submit short-form applications—and be subject to federal requirements like quiet-period obligations—a full four months before knowing whether the areas they are interested in bidding are even eligible. And I should note that the review of the long-form applications for symmetrical gigabit bidders before the auction will likely cause even larger delays for the auction, because such review requires a significant commitment of Commission staff and would divert resources that would otherwise be dedicated to short-form application review, providing outreach and education to interested applicants, and finalizing the eligible areas list and bidding software platform, all delaying the auction.

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As you know, I share your urgency to close the digital divide. I welcome the opportunity to work collaboratively with your office to ensure we reach our mutual goal as quickly and effectively as possible.

Please let me know if I can be of any further assistance.

Sincerely,  
  
Ajit V. Pai